

DEVIN DERHAM-BURK #104353  
CHAPTER 13 STANDING TRUSTEE  
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

SPOTNITZ, CAREN

SPOTNITZ, EDWARD

Debtor(s)

)  
)  
) Chapter 13  
) Case No. 10-5-7247 SLJ

)  
) THIRD AMENDED TRUSTEE'S OBJECTION  
) TO CONFIRMATION WITH CERTIFICATE  
) OF SERVICE

)  
)  
) Pre-Hearing Conference Date: JUNE 23, 2011,  
) 2011  
) Pre-Hearing Conference Time: 9:30 AM  
) Place: 280 S. 1<sup>st</sup> Street Room 3099  
) San Jose, CA  
) Judge: Stephen L. Johnson

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 0% Plan for the following reasons:

1. The plan does not comply with 11 U.S.C. § 1325(a)(5). The debtors list Tax Collector of Santa Clara County on Schedule D, but have omitted them from the plan. An Amended Plan must be filed to provide for this creditor.
2. The Trustee questions the feasibility of the debtor's Plan pursuant to 11 U.S.C. § 1325(a)(6) as there is a deficit of in the debtors' budget of \$1,332.77 per month, after they make their plan payment of \$150.00.

- 1 3. Pursuant to the United States Supreme Court decision in Ransom v. FIA Card Services,  
2 N.A., fka MNBA America Bank, N.A., 561 U.S. \_\_\_\_ (2011) the debtors are not allowed  
3 to take a vehicle ownership cost for a vehicle owned free and clear. The Trustee requests  
4 that the debtors amend the Statement of Current Monthly Income to remove the expense  
5 at lines 28 and/or 29.
- 6 4. The debtors failed to comply with 11 U.S.C. § 1325(b)(1)(B). Pursuant to line 59 of the  
7 debtors' Statement of Current Monthly Income and Calculation of Commitment Period  
8 and Disposable Income; the debtors have a monthly disposable income of \$1,520.85.  
9 The commitment period is 60 months; therefore, the total projected disposable income  
10 that must go to unsecured creditors is \$85,464.68. The following language must be  
11 added to Section 7 "Notwithstanding Section 2(d), general unsecured creditors shall  
12 receive no less than \$85,464.68." (Note: line 26, 28, 29, 50 and 60 are incorrect.)
- 13 5. The debtors are proposing to pay student loan debt differently than other unsecured debt  
14 in the case in contravention of 11 U.S.C. §1322(b)(1). The Trustee requests that the  
15 debtors amend Schedule J to remove the \$310.00 monthly payment for "Student Loans."
- 16 6. The Trustee is unable to determine whether all of the debtors' projected disposable  
17 income is being applied to pay unsecured creditors under the plan as required by 11  
18 U.S.C. §1325(b)(1)(B). The debtors have taken an "Additional Expense Claims"  
19 deduction on Line 60 a. of Form 22C for Student Loan Payment in the amount of  
20 \$355.00. The Trustee avers that this expense is not required for the health and welfare of  
21 the debtors pursuant to 11 U.S.C. §707(b)(2)(A)(ii)(I). Without this expense deduction  
22 the debtors would have disposable income and would be required to pay their unsecured  
23 creditors approximately \$21,300.
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1 7. The debtor Edward Spotnitz has failed to comply with 11 U.S.C. § 521(a)(1)(B)(iv)  
2 because she has failed to provide the Trustee with copies of his payment advices for May  
3 1, 2010 through May31, 2010. If the debtor cannot provide said payment advices a  
4 declaration, signed by the debtor under penalty of perjury, must be provided explaining  
5 why said payment advices are not available.  
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9 Dated: May 19, 2011

/S/ Devin Derham-Burk

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11 Chapter 13 Trustee  
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Said envelopes were addressed as follows:

LAW OFFICES OF SCOTT SAGARIA  
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/S/ Clotilde Costa  
Office of Devin Derham-Burk, Trustee